89-1605

Supreme Court, U.S.
FILED
JUL 20 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

PAUL A.L. NELSON

Petitioner,

v.

LORETTO L. JONES

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

THOMAS W. FINDLEY
Attorney at Law
One Sealaska Plaza, Suite 202
Juneau, Alaska 99801
(907) 586-4000

Attorney for Respondent

BEST AVAILABLE COPY

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RULES

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CONSTITUTIONAL AUTHORITY

United States Constitution, Amendment V:

"Nor shall be compelled in a criminal case to be a witness against himself . . ."

ALASKA RULES

Alaska Criminal Rule 45(b):

(b) Speedy Trial Time Limits. A defendant charged with a felony, a misdemeanor, or a violation shall be tried within 120 days from the time set forth in paragraph (c) of this rule.

(c) When Time Commences to Run. The time for trial shall begin running, without demand by the defendant, as follows:

(1) From the date the defendant is arrested, initially arraigned, or from the date the charge (complaint, indictment, or information) is served upon the defendant, whichever is first. . . .

Alaska Criminal Rule 45(g):

(g) Absolute Discharge. If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, the court upon motion of the defendant shall dismiss the charge with prejudice. Such discharge bars prosecution for the offense charged and for any other lesser included offense within the offense charged.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

Respondent LORETTO L. JONES respectfully prays that petitioner's Writ of Certiorari to review the judgment of the Supreme Court of the State of Alaska entered on October 27, 1989, be DENIED.

REASONS FOR DENYING WRIT

I.

PETITIONER'S CONSTITUTIONAL RIGHTS AGAINST COMPULSORY SELF-INCRIMINATION WERE NOT VIOLATED

Petitioner argues that admissions regarding his sexual abuse could have been used against him in future state criminal proceedings. [Petition for Writ of Certiorari, p. 5] That statement is inaccurate.

Paul Nelson was indicted by a Grand Jury for sexual abuse of T.N. on September 27, 1985. [Appendix A] The indictment alleged sexual abuse of T.N. during the summer of 1985, the same period of time and the same conduct which was alleged in the divorce proceeding. The criminal proceeding was dismissed on January 21,

1986. [Appendix B] Because petitioner was indicted and the charges were dismissed, Paul Nelson could not be indicted a second time for any sexual abuse of T.N. which occurred during the summer of 1985.

Alaska Criminal Rule 45(b) requires that a defendant be brought to trial within 120 days of the indictment. The time began to run on the day the indictment was returned. State v. Nitz, 684 P.2d 134 (AK App. 1984). Alaska Criminal Rule 45(g) requires that if a case is not completed within 120 days, the case is dismissed. Peterson v. State, 562 P.2d 1350 (Alaska 1970).

T.N. was approximately two and a-half years old when the sexual abuse occurred. No other instances of abuse were known to have occurred or were reported. Because the criminal charges were dismissed after an indictment was returned, Mr. Nelson cannot be prosecuted for this conduct again. Thus, any admissions of abuse by Paul Nelson will not subject him to criminal prosecution. Therefore, admission of

abusive conduct was not incriminating evidence which could subject Paul Nelson to criminal prosecution.

II.

TERMINATING PAUL NELSON'S VISITATION WITH HIS DAUGHTER WAS PROPER

Petitioner voluntarily entered into a stipulation admitting his sexual abuse to avoid further evidence establishing that abuse. In effect, after four days of trial, he had had enough. He stipulated to entry of the order which the judge would have entered anyway. The judge would have found that Paul Nelson sexually abused his daughter. The stipulation set forth various strict criteria for visitation with T.N., in recognition of the fact that petitioner had previously violated the conditions upon which visitation was granted.

Subsequently, petitioner denied that he had entered into the stipulation voluntarily and denied that he had abused his daughter.

With the overwhelming evidence of abuse, and a subsequent denial of the abuse, the

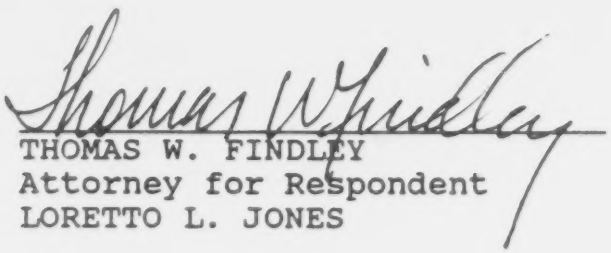
question before the court was what effect denial of the abuse would have on T.N. Expert testimony was presented, and experts for both parties testified that visitation would be harmful to T.N. The experts testified that with petitioner denying his sexual abuse, T.N. was confronted with doubt and confusion regarding her allegations, because those allegations were being refuted by her father. In effect, petitioner was saying that T.N. was lying about the abuse.

The issue is what is best for T.N., not petitioner. Expert testimony established that unless petitioner got professional help, he should not have visitation with T.N. As the expert witness cited in the Alaska Supreme Court's decision testified, since petitioner could not obtain treatment for a problem unless he admitted he had a problem, he could not get professional help. Under these circumstances the court properly ruled that it was in the best interest of T.N. that she be protected, and for those reasons visitation was terminated.

CONCLUSION

The Fifth Amendment right against self incrimination is not an issue in this case. Criminal charges brought against Mr. Nelson were dismissed in January of 1986. Trial did not occur until November of 1986, well beyond the time in which Mr. Nelson could be reindicted. Further, the ban against visitation was imposed for the protection of T.N., and it was proper to do so.

Respectfully submitted this 20th day of July, 1990.



THOMAS W. FINDLEY
Attorney for Respondent
LORETTO L. JONES

In the Superior Court of the State of Alaska
First Judicial District, Juneau, Alaska

FILED
IN OPEN COURT
Superior Court
State of Alaska
Date 9/27/85
Sharon A. Walker, Clerk
JAW, Deputy

STATE OF ALASKA,
Plaintiff

v.

PAUL A. NELSON,
DOB: 5/28/52
Defendant(s)

No. 1JA-S85-104 Cr

INDICTMENT

FOR

AS 11.41.434(a)(2)(B)
~~Violation of Sexual Abuse of a Minor in the~~
First Degree

The Grand Jury Charges:

That on or about and between May 1, 1985 through September 19, 1985 at or near Haines, in the First Judicial District, PAUL A. NELSON being 18 years of age or older, did engage in sexual penetration with T.N., a person who is under 18 years of age, to-wit: two and one-half years old and being defendant's daughter. All of which is an unclassified felony offense being contrary to AS 11.41.434(a)(2)(B) and against the peace and dignity of the State of Alaska.

DATED this 27th day of September, 1985.

A TRUE BILL,

Stephanie E. Joannides
Assistant District Attorney

Barbara Scott
Grand Jury Foreman

Witnesses before the
Grand Jury:

T.N.
Lorette Jones
Chief Boran Yankovich
Doctor Beatty

P.03

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PAUL A. NELSON	)	
	)	
Defendant.	)	
	)	No. 1HA-S85-104 Cr.

DISMISSAL

Pursuant to Rule 43(a), Rules of Criminal Procedure, the District Attorney for the First Judicial District at Juneau, Alaska, in the interest of justice, hereby dismisses the charge of Sexual Abuse of a Minor in the Second Degree against the above named defendant without prejudice. The State, after serious consideration, reached the conclusion that the victim in this case, due to her young age, could not be qualified as a witness under the Alaska Rules of Evidence and Criminal Procedure. This dismissal does not reflect the strength or weakness of the State's case.

DATED at Juneau, Alaska this 27 day of January 1986.

HAROLD M. BROWN
ATTORNEY GENERAL

By: Stephanie E. Joannides
Assistant District Attorney

DISTRICT ATTORNEY, STATE OF ALASKA
POUCH M, JUNEAU, ALASKA 99811
PHONE 465-3600

PAUL A.L. NELSON v. LORETTO L. JONES

AFFIDAVIT OF SERVICE BY MAIL

I am the attorney of record in the foregoing matter. I am over the age of 18, and not a party to the within action. My buisness is One Sealaska Plaza, Suite 200, Juneau, Alaska 99801.

On July 20, 1990, a served the within OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA by placing a true copy theref enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Juneau, Alaska, addressed as follows:

SUPREME COURT OF THE UNITED STATES
ATTN: Supreme Court Clerk
1 First Street, N.E.
Washington, D.C. 20543

SUPREME COURT OF THE STATE OF ALASKA
P.O. Box U
Juneau, Alaska 99811

STEVEN E. KING, ESQ.
800 H Street, Suite 202
Sacramento, California 95814

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 20th day of July, 1990, at Juneau, Alaska.

Thomas W. Findley
Attorney for Respondent